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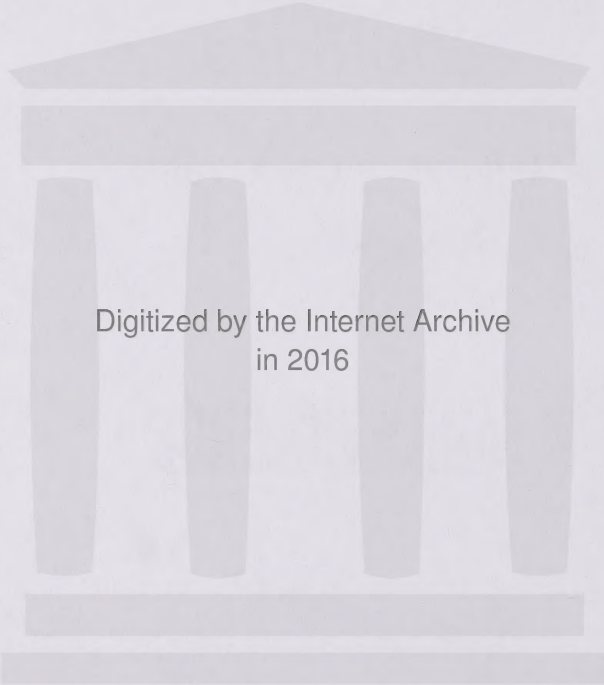
Victims of Family Violence

Information and Rights

FAMILY VIOLENCE



Alberta
JUSTICE



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Introduction

Violence in the home strikes at the heart of society. Anyone in a violent relationship experiences a loss when the one place where they should be safe and secure is a place of danger. Family violence has traditionally been viewed as a social or family problem. In fact, it is a crime that requires police intervention.

It is a criminal act for your partner to assault you, just as it is a crime for any individual to assault another. As a victim of family violence, you are entitled to the maximum protection from harm or abuse permitted by law.

As an abuse victim, you may feel confused, fearful, angry and frustrated about being involved in an abusive situation. Some of your feelings may be:

- I should protect my partner.
- I don't know what to do.
- It's my fault.
- If I change, it will stop.
- Maybe things will improve.
- It only happens to me.
- I'm afraid if I try to leave, my partner will hurt me or my children.
- I feel so trapped.
- I have no money.
- I'm really scared.
- If I leave, my partner will find me anyway.

It is important to realize that you are not to blame and that you are not responsible for your partner's actions.

Physical violence rarely occurs only once. Unless proper intervention occurs, the violence becomes more severe or more frequent. You might sustain serious injuries as a result of this violence—injuries like broken arms, cracked ribs and concussions. If you are pregnant, you may be punched or kicked in the stomach. In addition to being assaulted, you may also experience sexual, financial or emotional abuse.

You do not deserve to be abused. Family violence is a crime. There is help for you to protect yourself and your children.

Types of abuse

As you are probably aware, there are many types of abuse. Physical and sexual abuse are described in the *Criminal Code* of Canada as “assault.”

Physical abuse includes many degrees of physical violence such as pushing, shoving, slapping, kicking, punching, hitting, spitting, pinching, pulling hair, choking, throwing things, hitting victims with an object, and using or threatening to use a weapon.

Sexual abuse is making victims do any sexual acts they do not want to do.

There are other kinds of abuse that are unacceptable but not punishable by the *Criminal Code*:

Financial abuse occurs when your partner does not allow you to have money or any control over money. You are not allowed to have a job and you are dependent on your partner for money and survival.

Isolation occurs when you are isolated from your family, friends and community as a way for your partner to stay in control. Your partner may be extremely jealous of any contacts you have, forbid you to have contact with anyone, or monitor your phone calls, mail or daily activities. Sometimes your partner may use intimidation or threats to control you.

Emotional/psychological abuse can cause anxiety and depression and cause you to withdraw from everyone or everything around you. Examples of this type of abuse include insulting your family or friends, ridiculing your beliefs, race or religion, using constant put-downs, threatening suicide if you leave, keeping you prisoner in your home, threatening to take the children if you leave and threatening to have you deported.

All of these are defined as abuse and you should be aware that any one of them may lead to another. Recognize these symptoms and understand your choices when making a decision to stop the violence.

Cycle of violence

Research and experience show that violence in a relationship follows a cycle. The tension builds over a period of time—days, weeks, months or even years. Then comes the assault, which is followed by a period of peacemaking, often referred to as the “honeymoon” phase.

Phase one – tension build-up

- You can sense your partner’s edginess.
- You are unable to discuss the underlying problem with your partner.
- Your partner becomes verbally abusive.
- You may feel the abuse is deserved.
- In order to cope, you deny that violence will occur and believe that it can be controlled.

Phase two – violent episode

- The tension builds until it becomes unbearable. You may even provoke violence to get it over with. Your partner loses control and acts violently.
- It may begin with a push or shove. With time, it escalates to a slap, kick or punch, then possibly to the use of weapons, resulting in more serious injuries.
- Your partner claims not to want to hurt you, just to teach you a lesson.
- Your partner justifies his/her actions and blames you.
- Both you and your partner minimize the seriousness of the injuries.
- You accept the blame.

Phase three – honeymoon

Both you and your partner welcome this state.

Your partner:

- fears you will leave the relationship.
- is worried and tries to make up.
- becomes charming and manipulative.
- believes anger can be controlled and it will never happen again.

You:

- want to believe your partner.
- may be showered with gifts (flowers, etc.).
- begin to feel responsible for the abuse.

If you look at your own relationship with your partner, you may relate to this cycle of violence. As the violence is not constant, you can often be confused. Being needed can be a powerful incentive to stay in a relationship. It can create a strong belief that things will get better. But once violence has begun, it will need outside intervention to stop.

What about my children?

Studies show that the effects on children living in an abusive environment are harmful and lasting. Children learn to accept violence as a normal part of family life and will often mimic their parents and become violent themselves.

If a parent remains in an abusive home, children learn there are few consequences for violent behaviour. They become confused in their feelings of love and hurt. Their feelings toward their parents may also be confused and this may result in losing respect for them or even directing abuse toward them. Boys may grow up to abuse the partners they choose and girls tend to accept violence in relationships because they think of violence as a normal part of a relationship.

Children who observe violence may:

- feel frightened, confused and unhappy.
- behave aggressively, become belligerent or withdrawn and act fearful.
- become depressed or even suicidal.
- feel responsible for the violence.
- exhibit self-destructive, accident-prone behaviour.
- have physical complaints such as headaches and stomach aches.
- have night-time difficulties such as insomnia, nightmares and bedwetting.

- seek punishment with behaviours such as lying or stealing (believing punishment means love).
- adopt rigid gender role identification:
 - girls can become withdrawn, passive, and given to approval-seeking behaviour.
 - boys can become aggressive, bullying and given to self-destructive behaviour.

Your children deserve better. Although removing them from a violent home will not automatically remove the damage already done, it will certainly encourage a positive change in their lives. Counselling is available to help children with the confused emotions or trauma they have experienced.

If you decide to leave an abusive situation, take your children with you. If the police are involved, they can escort you to a safe place.

As a parent, you share a responsibility with your partner to protect your children. The cycle of violence can be broken—you and your children deserve to be protected.

What to do if you have been assaulted

- Call the police (or have a neighbour or friend do it for you). Use 911 (or your local police emergency number if you do not have 911 service) if the threat of danger is immediate.
- Try to give the police your name, address and phone number. Provide as much additional information as circumstances allow.

Let them know if:

- your life is in danger.
- you are injured and will need an ambulance.
- there are weapons being used and if so, what type.
- there are drugs and alcohol involved.
- there are children (or others) present in the home.
- there is a history of violence.
- there is a restraining order or peace bond in effect.

Police intervention: what to expect

Calling the police to intervene in a family violence situation is not an easy step but remember, **family violence is a crime**. Police can defuse a crisis situation and they can also offer you immediate assistance if you require it. In some centres, crisis workers are available to assist police in arranging professional follow-up.

When the police arrive at your home, they must take charge of the situation, make an assessment, find out what is going on and make sure nobody gets hurt. The police may separate you and your partner and ask both of you questions about what occurred. They may ask questions which you might find awkward, but they must be able to find out all the relevant facts and information.

It is important that the information you give the police is complete and factual, as it will lead to a decision as to whether they believe there are reasonable and probable grounds to lay a charge. The police will want a detailed description of the violence and the extent of injuries. They will also need to know your relationship to the abuser and if there is a history of violence.

Make sure you tell the police if there is a restraining order or peace bond in effect. Be prepared to show the police a copy of this document.

Victim assistance units exist within many police services. Ask to be put in contact with them. They can help with crisis intervention, practical assistance, information referrals and courtroom education and support.

Based on the circumstances the police may proceed as follows:

1. Lay a charge

If the police have reasonable and probable grounds to believe an assault or other crime has taken place, they will lay a charge under the *Criminal Code*. Once the police make a decision to lay a charge, they must consider whether to make an arrest. To effect an arrest, the police must consider all the circumstances leading up to the charge, including the need to prevent offences from occurring or continuing. It is very important that you let the police know if you fear for your safety should your partner be released.

If the police proceed by arrest, your partner will have the right to a bail hearing within 24 hours. This bail hearing (or show cause) may be in front of a Justice of the Peace or a Provincial Court Judge. Unless there is sufficient evidence indicating custody until the court date, your partner will be released.

If you feel you will be in danger if your partner is released, inform the police and request that the court impose release conditions stating that your partner cannot contact you.

If the police do not believe an arrest is necessary, they will issue an appearance notice requiring your partner to report for fingerprinting on a certain date and to appear in court at a later date.

2. Not lay a charge

If the police believe there is not enough evidence to initiate a charge, they will let you know. You can ask that this decision be referred to a supervisor for further review if you disagree with it. If, after this review, you are still unsatisfied with the result, you can seek independent legal advice for appropriate criminal or civil action.

Once the immediate crisis has been defused and statements taken, the police or crisis worker can assist you in deciding your next move. Remember, you must make the final decision yourself. Sometimes it may be safe for you to both remain in the home, but usually one of you should leave unless an arrest is made. The police do not have the authority to remove abusers from homes if they are entitled to be there, so it is often the abused partners and children who leave. The police can take you to a safe place.

The police can also be present when you remove personal belongings from your home, whether at the time of the initial intervention or at a later date. You should take:

- personal clothing
- house keys
- charge cards
- bank books
- medication
- personal identification

- children's clothing
- special toys and blankets for the children

Property that is jointly owned should not be removed.

Who may withdraw a charge?

Once a charge has been laid, neither you nor the police have the authority to have it withdrawn. Only the Crown prosecutor has this authority. The policy of the Department of Justice is that charges of spousal abuse normally proceed, even when the victim does not want to lay charges.

Going through the court process will reinforce to your partner that abuse toward you is a crime and will not be tolerated. If your partner is found guilty, the judge may require your partner to participate in counselling to change behaviour patterns and learn how to address problems in a non-violent manner.

The court process

1. First appearance

After charges are laid, your partner will be required to appear in court before a Provincial Court Judge. This is called the "first appearance."

In court, the charges will be read out and the judge will ensure that your partner understands them and is ready to enter a plea.

- a) If your partner enters a guilty plea, the judge will either impose a sentence immediately or ask for a pre-sentence report and set another date for sentencing.
- b) If your partner enters a not guilty plea, the judge will set a trial date.
- c) If your partner asks for an adjournment to obtain legal advice, the judge may set another court date in the near future.

- d) If your partner enters an election for trial in the Court of Queen's Bench, the judge will set a date for a preliminary hearing.

If your partner is in custody, the first appearance may include a "show cause" hearing. This is when a decision will be made about whether your partner is released or held in custody until the next court date.

2. The trial

If your partner enters a plea of not guilty, a trial date will be set. Going through a trial may be a difficult step for you, but keep in mind that it is also a major step forward in changing your abusive relationship.

As with most cases of spousal abuse, there may only be two witnesses: you and your partner. This means it is important that you cooperate with the Crown prosecutor to ensure all evidence is provided (i.e. pictures, medical documents, torn clothing, plus any notes you may have made regarding the situation).

Depending on how busy your local court is, it may be many weeks before your case goes to trial. The following outline will give you some idea of what to expect before and during the actual trial:

- a) You will be subpoenaed to appear in court (a subpoena is a legal document indicating the date and time you must be in court, as well as the charge against your partner). Remember, once you are subpoenaed, you are legally obligated to appear in court.
- b) The Crown prosecutor represents the Crown and will present the evidence available to prove the charges. The Crown prosecutor has the police report and statements and will prosecute based on that documentation. It is important that you be open and honest. Express any concerns you may have for your safety. If you wish to present any other information before the court, you may do so through the Crown prosecutor. This information might include prohibiting your partner from having contact with you and requiring your partner to seek counselling.

- c) If you signed a statement with the police and do not have a copy of it, ask for one and review it prior to the trial.
- d) Prior to your trial, it may be helpful to go to another trial (they are listed daily outside each court room) so you can familiarize yourself with the trial process.
- e) You may bring friends or family members with you to the trial for support. You may also wish to contact the nearest Victims' Assistance Program in your area to obtain information about criminal justice proceedings or for courtroom support.
- f) Once you arrive at the court house, report to the Crown prosecutor handling your case. The Crown prosecutor will be at a table in the front of the court room. You may ask the Crown prosecutor any questions you have about the court process such as:
- where to wait until you are called into court.
 - whether or not you must give your address aloud in court.
 - what kinds of questions the Crown will ask you.
 - whether or not you can stay in court after you have given your testimony.
 - whether you can use your notes—you may want to give the Crown prosecutor a copy.
- g) The Crown prosecutor will call all of the Crown's witnesses first. Then the defence lawyer will call any witnesses for the defence.
- h) When you are called to give evidence, the Clerk of the Court will read an oath and ask you to swear to tell the truth.
- i) Examples of questions that the Crown prosecutor may ask you include:
- What is your relationship to the accused?
 - How long were you in the relationship?
 - Were you assaulted by the accused on (date)?
 - Where did this assault take place?
 - Did you consent to the assault?
 - Who was present when the assault occurred?
 - What led up to this assault?
 - Were either you or the accused consuming alcohol at the time of the assault?

- Did you sustain injuries?
 - Did you receive medical treatment?
 - Did anyone witness the injuries?
 - What is your current living situation?
- j) You should expect to be cross-examined by your partner's lawyer. It is important not to overreact. Remember—you were there, not the lawyer.
- k) The Crown prosecutor can question you further to clarify any points raised by your partner's lawyer.
- l) It is important that you understand every question prior to answering it. If you don't understand, say so. Do not guess.
- m) Your partner will be in court and may be giving testimony. It is important that you remain silent even if you do not agree with the testimony.
- n) After all witnesses have provided their testimony and cross-examinations have occurred, both the Crown prosecutor and your partner's lawyer will address the court.
- o) The judge will then make a decision as to your partner's guilt or innocence.

Sentencing

If your partner is found guilty of the charge, the sentence may be as follows:

1. Probation

The judge may require your partner to be under the supervision of a probation officer and abide by certain conditions. These conditions may include compulsory counselling, no contact with you, paying restitution for damages or performing community service work.

2. Fine

The judge may require your partner to pay a fine.

3. Jail

The judge may sentence your partner to a period of incarceration.

The judge may impose any combination of two of the above sentences, i.e. jail to be followed by probation, probation and a fine, or jail and a fine.

Other legal remedies

In addition to calling the police for intervention and protection, you may apply for a peace bond or a restraining order.

1. Peace bond

A peace bond, issued under section 810 of the *Criminal Code*, is a court order that requires your partner to keep the peace and obey any other conditions the court deems necessary. **You do not need a lawyer to obtain a peace bond.**

A peace bond may include a condition forbidding your partner to have any type of contact with you. If your partner has not been charged with an offence and you are frightened for your safety, you may be able to apply for a peace bond. A peace bond can also be issued if you fear harm to your children or property.

To obtain a peace bond:

- a) Report the incident to the police and indicate why you are worried about your safety. Get a file number from the police.
- b) Make an appointment through your local criminal court with a Justice of the Peace.

c) Explain all the details to the Justice of the Peace. It is best to try to write everything down ahead of time. If there are sufficient grounds to warrant a peace bond, the Justice of the Peace will set a court date and a court summons will be served on your partner.

If your partner is served with a summons but fails to appear in court, a decision may be made to issue a peace bond “ex parte” (with your side only) based on your information.

2. Restraining order

A restraining order is a court order which requires your partner to stop molesting, annoying or harassing you or your children.

Restraining orders can be put in effect relatively quickly but:

- a) if you are legally married, you must also apply for a civil action such as a divorce or an action in tort such as assault or trespass to the person.
- b) if you are living in a common-law relationship, you must start an action such as civil assault, in order to get a restraining order (a civil action is a claim for damages for personal injuries).

A restraining order is usually in effect for three months from the date your partner is served with the order. This can be renewed by your lawyer through the Court of Queen’s Bench.

Keep a copy of your restraining order. An order may help keep your partner away. However, if it is breached, call the police. Be prepared to produce the restraining order.

A certified copy of the restraining order should be forwarded to your local police service for entry on CPIC (Canadian Police Information Centre). Contact the police to see what other information they require.

3. Legal assistance

If you or the police lay charges against your partner, you do not need a lawyer to go to court. However, legal assistance may be required to investigate custody agreements, divorce or other concerns you may have.

Here are some options to consider:

- a) **Dial-a-Law** provides pre-recorded tapes containing general legal information. Written copies of these tapes can be mailed upon request by telephoning 1-403-234-9022.
- b) **Lawyer Referral** will give you the names of three local lawyers who deal in cases specific to your needs. For a minimal fee you can meet with the lawyer of your choice to discuss your situation. The number is 1-800-661-1095.
- c) **Legal Aid** is for people who cannot afford to hire a lawyer privately. You may be requested to pay a certain amount on a monthly basis. To find the number of your nearest Legal Aid office, you may contact your government RITE line at 310-0000 or consult the white pages of your phone book.

Rights of a victim of family violence

A victim of family violence is entitled to:

- be free and safe from violence.
- the maximum protection from abuse permitted by law.
- be treated with courtesy, compassion and respect.
- information about legal rights and the assistance that can be obtained from community resources.
- obtain a restraining order or peace bond in court.

Family violence is a crime. As a victim of family violence, you are entitled to protection under the criminal justice system. You are not alone—the police and helping agencies in your community can provide you with assistance. Reach out for help!

Notes

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